

REMARKS

Claims 1, 8-11, and 51-57 are currently pending. Claims 56-57 are new. Support for these new claims can be found on page three, paragraph three; page twelve, paragraph three; and Fig. 4A of the original specification.

The Examiner has rejected claims 1, 8, 11, and 51-55 under 35 U.S.C. 102(a/e) as being anticipated by Brown (2003/0003127). Specifically, the Examiner argues that the Brown reference discloses the subject matter of independent claims 1 and 54.

Applicants respectfully disagree with the Examiner's argument. Claims 1 and 54 both teach, among other things, a device having components with different relative rates of *in vivo* degradation and claim 1 alone argues that the device, when initially implanted, does not have sufficient porosity to support tissue in growth. Brown does not disclose a device having components with different relative rates of *in vivo* degradation. If the Examiner maintains this argument, then it is respectfully requested that the Examiner specifically states where, in the Brown reference, this limitation is disclosed. In addition, Brown does not disclose a device that, when initially implanted, does not have sufficient porosity to support tissue in growth. Rather, as disclosed in at least paragraphs 27 and 28, the device of Brown includes pores having a size that would be sufficient to support tissue in growth. Therefore, Brown does not anticipate claims 1 and 54. Since claims 8, 11, 51-53, and 55 depend either directly or indirectly from claims 1 and 54, these claims are also not anticipated by Brown. It is respectfully requested that the Examiner withdraw this rejection.

The Examiner has rejected claims 9-10 under 35 U.S.C. 103(a) as being unpatentable over Brown. Specifically, the Examiner argues that Brown teaches a device having differing rates of degradation, but is silent as to the numerical rates of degradation. However, the Examiner argues that the optimization within prior art conditions is obvious to one of ordinary skill in the art and that the selection of a material or equivalent recognized in the prior art supports a *prima facie* case of obviousness. As stated above, Brown does not disclose a device having differing rates of degradation. Even if Brown did disclose a device having differing rates of degradation, it doesn't disclose a device that, when initially implanted, does not have sufficient porosity to support tissue in growth. Claim 1, which claims 9 and 10 directly and indirectly depend from, includes this limitation. Therefore, claims 9 and 10 are not unpatentable

over Brown and are in condition for allowance. It is respectfully requested that the Examiner withdraw this rejection.

New claim 56 includes the limitations of claim 1, but also specifies that the second component comprises a polymer infiltrated in the ceramic structure such that the polymer fills the interconnected pores throughout the entire ceramic structure. Brown does not disclose a device having a porous ceramic structure where the pores throughout the entire ceramic structure are filled with polymer. Rather, only the ceramic structure pores located in the interphase region include polymer. The ceramic structure pores that are not located in the interphase region do not include polymer. Therefore, claim 56 is patentable over Brown.

New claim 57 includes the limitations of claim 54, but specifies that the device, when initially implanted, is non-porous, rather than substantially non-porous. The device of Brown includes a polymer layer and a ceramic layer, both of which are porous. Therefore, claim 57 is patentable over Brown.

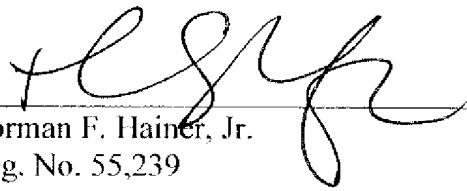
Applicants do not acquiesce to the characterizations of the art. For brevity and to advance prosecution, however, Applicants may have not addressed all characterizations of the art, but reserve the right to do so in further prosecution of this or a subsequent application.

The absence of an explicit response by the Applicants to any of the Examiner's positions does not constitute a concession of the Examiner's positions. The fact that Applicants comments have focused on particular arguments does not constitute a concession that there are not other good arguments for patentability of the claims. All of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

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Respectfully submitted,

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Norman F. Hainer, Jr.
Reg. No. 55,239

Smith & Nephew, Inc.
150 Minuteman Road
Andover, MA 01810
Telephone: 978-749-1311
Facsimile: 978-684-6417